

IN THE MATTER OF *THE PARAMEDICS ACT* AND BYLAWS AND IN THE MATTER OF
A COMPLAINT AGAINST MARK OLLINGER

SENTENCING DECISION

Discipline Committee of the Saskatchewan College of Paramedics

Discipline Committee Members:

Jamie Struthers, Q.C., Public Representative, Acting Chair
Robert Ferland, EMT-Paramedic, Member

Legal Counsel for the Discipline Committee: Merrilee Rasmussen Q.C.
Legal Counsel for the Professional Conduct Committee: Roger Lepage
Legal Counsel for Mr. Ollinger: Evert Van Olst

INTRODUCTION:

[1] By its decision of September 28, 2011, the Discipline Committee of the Saskatchewan College of Paramedics (the “College”) found Mark Ollinger, a member of the College, to be guilty of professional misconduct contrary to subsection 25(1) of *The Paramedics Act* based on the fact that the member communicated confidential information that he obtained while a member of the College’s Professional Conduct Committee to another member who was the subject of a complaint, contrary to subclause 8(1)(g)(v) of the College’s Regulatory Bylaws and/or contrary to clauses 25(a) and (b) of the Act. The Committee reconvened by conference call to hear submissions in relation to sentencing. In the interim, Don Brickner, Chair of the Discipline Committee, had resigned and, with the agreement of all parties, the remaining members of the Discipline Committee proceeded to hear and render a decision with respect to sentencing. Jamie Struthers acted as Chair.

[2] Once the Committee has determined that a member is guilty of professional misconduct, section 31 of the Act authorizes the Committee to make an order relating to sentence that addresses the unacceptable behaviour that led to the complaint. Section 31 provides as follows:

31(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

(a) an order that the member be expelled from the college and that member’s name be struck from the register;

(b) an order that the member’s licence be suspended for a specified period;

(c) an order that the member’s licence be suspended pending the satisfaction and completion of any conditions specified in the order;

(d) an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to an order that the member:

(i) not do specified types of work;

(ii) successfully complete specified classes or courses of instruction;

(iii) obtain medical or other treatment or counselling or both;

(e) an order reprimanding the member;

(f) any other order that the discipline committee considers just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

(a) that the member pay to the college, within a fixed period:

(i) a fine in a specified amount not exceeding \$5,000; and

(ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and

(b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member's licence be suspended.

[3] The Act also requires the Committee to exercise its powers to make orders in a manner that will achieve its objects and carry out its duties as set out in section 4:

4(1) It is the duty of the college at all times:

(a) to serve and protect the public; and

(b) to exercise its powers and discharge its responsibilities in the public interest and not in the interests of the members.

(2) The objects of the college are:

(a) to regulate the practice of the profession and to govern the members in accordance with this Act and the bylaws; and

(b) to assure the public of the knowledge, skill, proficiency and competency of members in the practice of emergency medical services.

POSITIONS OF THE PARTIES:

[4] Counsel for the Professional Conduct Committee submits that because Mr. Ollinger's conduct was deliberate and because the conduct in question is serious in that it undermines the public confidence in the ability of the profession to self-regulate, a significant penalty should be imposed to ensure both specific and general deterrence. For these reasons, he recommended that the Discipline Committee order the following:

1. A suspension of 24 months;
2. A fine of \$1,500;
3. Provision of a verbal report to the Professional Conduct Committee indicating why protecting confidentiality is important in maintaining ethical standards;
4. Publication of the decision in accordance with the policies of the College; and
5. Pay costs of \$10,148.27, being half the cost to the College of the discipline process.

[5] Counsel for Mr. Ollinger argues that given the context and all relevant mitigating factors the appropriate order is a formal reprimand. He also argues that the costs incurred in the process of investigation and discipline are excessive.

ANALYSIS:

[6] Both counsel have referred the Discipline Committee to the factors outlined by James T. Casey in *The Regulation of Professions in Canada*¹ to be taken into account in sentencing. Generally, the Discipline Committee must consider the element of specific deterrence in relation to the member himself, as well as general deterrence of all members, rehabilitation, isolation and, most importantly, the need to demonstrate to the public that the profession is able to supervise and regulate the conduct of its members in the public interest. In addition, of course, the penalty imposed should not be substantially different from punishments meted out in other similar cases.²

[7] The Discipline Committee must also consider mitigating factors. These include the nature and gravity of the offence, attitude, age and inexperience, discipline record, co-operation,

¹Carswell, Looseleaf Edition, at Chapter 14.

²*Ibid*, at p. 14-5.

whether restitution has been made, good character, unblemished record of professional service, other negative impacts on the member, and the impact on the victim of the offending behaviour.³

[8] In this case, the Discipline Committee considers the offence of communicating confidential information to be a serious offence. However, the Committee notes that Mr. Ollinger has a long and unblemished record of service to his profession and no previous discipline record. He is highly regarded by many of his peers. His was a one-time indiscretion. The other individuals involved are members of the profession, so there has not been any apparent damage to the public interest.

[9] There are no cases under *The Paramedics Act* that are similar to this one. Counsel for the Professional Conduct Committee has referred the Discipline Committee to a decision of the Ontario College of Teachers Discipline Committee in the case of *Ontario College of Teachers v. Black*.⁴ In that case, Mr. Black was a member of the discipline committee that considered the reinstatement application of a teacher. The reinstatement process was a closed-door confidential proceeding. Mr. Black was unhappy with the decision of the majority and “went public” with the details of the case, including the name of the teacher. He appeared on TV, sent emails and reports, and wrote letters to members of the provincial government. The case was reported extensively in the media. He effectively waged a campaign against the policies of the Ontario College of Teachers and the decision of the majority of the members of the committee to reinstate the specific teacher in question. He was suspended for 24-months and assessed a fine of \$1,000 based on the need to balance general and specific deterrence as well as rehabilitation. The lengthy suspension was directed to the need to ensure public confidence in the confidentiality of information provided to teachers in the course of their duties, especially where this involved children.

[10] The Discipline Committee has also reviewed summaries of reported discipline decisions as described in Casey, thus identifying two other cases in which a breach of confidentiality was at issue. In *Deloitte & Touche LLP v. Institute of Chartered Accountants of Alberta*⁵ an accountant provided a report containing confidential information that was filed in court, contrary to the rules of the profession. A fine of \$30,000 was reduced on appeal to \$27,500, but the fines related to two other charges on which findings of guilt were also made. In *Heaslip v. Saskatchewan Registered Nurses Assn.*⁶ a registered nurse who facilitated the release of a list of patient names to a patient advocacy group was found guilty of professional misconduct and, on appeal, was suspended for two months and ordered to pay costs of \$10,000. The review of reported discipline decisions also reveals that two-year suspensions are generally assessed in very serious cases, such as a sexual relationship between a teacher and a student, a veterinarian

³*Ibid*, at pp. 14-6 to 14-9.

⁴2009 LNONCTD 19.

⁵2008 ABCA 162.

⁶2006 SKQB 406.

selling narcotics to a known addict for human consumption, or an accountant double-billing, withholding records and misreporting income and assets.⁷

[11] The Committee's own jurisprudence includes a case in which a member misrepresented to the College that he had complied with the continuing medical education requirements for licensure. The member did not appear at the hearing and was found guilty and fined \$2,500 and ordered to pay costs of \$5,000.⁸ In another case, the member was found guilty of bullying and assessed a formal reprimand and a fine of \$1,500 and was also required to provide a written apology to the complainant.

[12] After taking into account all of the relevant factors applicable to sentencing in a case of professional discipline, and in particular the nature and circumstances of the particular offence of which Mr. Ollinger has been found guilty, the Discipline Committee has concluded that it is appropriate that Mr. Ollinger pay a fine and costs in accordance with the Committee's order as set out below.

ORDER:

[13] For all the above reasons, pursuant to section 31 of *The Paramedics Act*, the Discipline Committee hereby orders as follows:

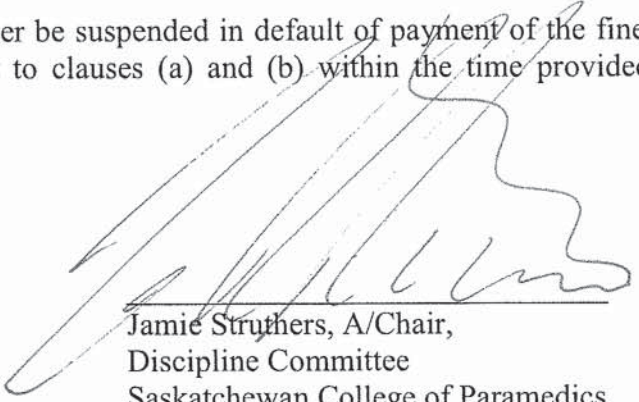
(a) that Mark Ollinger pay a fine to the College in the amount of \$1,000, to be paid within six months of the date of this Order; and

(b) that Mark Ollinger pay costs to the College in the amount of \$2,500, to be paid within six months of the date of this Order

(c) that the licence of Mark Ollinger be suspended in default of payment of the fine and costs ordered to be paid pursuant to clauses (a) and (b) within the time provided for payment.

DATED at Regina, Saskatchewan:

January 5, 2012
Date



Jamie Struthers, A/Chair,
Discipline Committee
Saskatchewan College of Paramedics

⁷See *M. (P.E.) V. College of teachers (British Columbia)* (2003), 17 Admin. LR. (4th) 237; *Fetherston v. College of Veterinarians (Ontario)* (1999), 117 O.A.C. 334; *Shieh v. Certified General Accountants Assn. (British Columbia)* 2007 BCSC 202.

⁸*Saskatchewan College of Paramedics v. Soles*, February 2011, unreported.